

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 11-7657**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DARIUS KEITH RAINEY,

Defendant - Appellant.

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Appeal from the United States District Court for the Western  
District of North Carolina, at Charlotte. Max O. Cogburn, Jr.,  
District Judge. (3:98-cr-00093-MOC-1)

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Submitted: February 23, 2012

Decided: February 28, 2012

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Before MOTZ, DAVIS, and DIAZ, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Darius Keith Rainey, Appellant Pro Se. Amy Elizabeth Ray,  
Assistant United States Attorney, Asheville, North Carolina, for  
Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Darius Keith Rainey seeks to appeal the district court's order denying his motion to reduce sentence.<sup>1</sup> We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

When the United States or its officer or agency is a party, the notice of appeal must be filed no more than sixty days after the entry of the district court's final judgment or order, Fed. R. App. P. 4(a)(1)(B), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5), or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." Bowles v. Russell, 551 U.S. 205, 214 (2007).

The district court's order was entered on the docket on April 19, 2011. The notice of appeal was filed on November 28, 2011.<sup>2</sup> Because Rainey failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal

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<sup>1</sup> The district court construed Rainey's motion to reduce sentence as a 28 U.S.C.A. § 2255 (West Supp. 2011) motion and denied it as successive.

<sup>2</sup> For the purpose of this appeal, we assume that the date appearing on the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266 (1988).

period, we dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED